

REMARKS

Forty-two claims were originally filed in the present Application. Claims 1-42 currently stand rejected. Claims 1 and 21 are amended, and claims 17 and 37 are canceled herein. In addition, new claims 43-55 are submitted herein. Reconsideration of the Application in view of the foregoing amendments and following remarks is respectfully requested.

Notice Of Draftsman's Patent Drawing Review

In paragraph 2 of the initial Office Action mailed on April 23, 2002, the Examiner requested the Applicants to "note PTO-948 concerning notice of draftsman's patent drawing review." The Examiner further stated that "correction of the noted defect can be deferred until the application is allowed by the examiner." However, as mentioned three different times in each of the Applicants' prior Responses to Office Actions, Applicants have never received a PTO-948 or any other document regarding defects in the drawings. Applicants therefore respectfully again request the Examiner to provide such documents, so that Applicants may respond in an appropriate manner. In the alternative, Applicants request the Examiner to explicitly indicate that no corrections to the drawings are necessary.

Non-Statutory Obviousness-Type Double Patenting Rejection

In paragraph 3 of the present Office Action, claims 1-42 are rejected under the judicially-created doctrine of obviousness-type double patenting as being

unpatentable over claims 1-34 of prior U. S. Patent No. 6,453,376 (hereafter, 376). The Applicants respectfully traverse.

In support of the foregoing double-patenting rejections, the Examiner states that *"the three means of the claim in the instant patent . . . are exactly the same as the means in the '376' patent . . ."* Applicants respectfully refer the Examiner to the language of independent claim 1 from the 376 reference which clearly and unambiguously recites a *"resource characterization set including a plurality of resource characterizations including a most mode, a best mode, and a worst mode."*

In contrast, the present Application recites and claims only a single "resource characterization", as opposed to a "resource characterization set" that includes a "plurality of resource characterizations". Furthermore, the present Application nowhere claims or anywhere discloses the claimed "most mode", "best mode", or "worst mode" of the 376 patent.

The Examiner also states that "there is no recitation of "resource characterization set including a plurality of resource characterizations including a most mode, a best mode, and a worst mode", which *implies that element and their functions has been omitted from the claim*. Applicants disagree that these foregoing elements have merely been omitted, since nowhere in the specification are they even taught or disclosed.

Applicants further submit that the 376 reference fails to cover that "current available resource values are initially set to be less than one-hundred percent of total device resources", as recited in claims 12 and 32, or that "at least one of said resource characterization and said allocation manager is re-configurable to

provide and altered functionality” In addition, Applicants herein submit additional claims 43-55 for consideration by the Examiner. The new claims 43-55 recite specific detailed embodiments for implementation and utilization of Applicants’ resource characterization, as disclosed and discussed in the Specification. Applicant submits that newly-added claims 43-55 contain a number of limitations that are not covered by the 376 reference.

Applicants therefore submit that the present Application and the 376 reference are directed to substantially different subject matter, and therefore the present Application would not improperly extend the “right to exclude” others with regard to a single inventive concept. In view of the foregoing remarks, Applicants submit that the Examiner’s rejection under the judicially-created doctrine of obviousness-type double patenting has been adequately addressed, and respectfully request that the rejections be withdrawn so that claims 1-16, 18-36, and 38-55 may issue in a timely manner.

35 U.S.C. § 103

In paragraph 4 of the Office Action, the Examiner rejects claims 1-40 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,987,021 to Erickson et al. (hereafter Erickson) in view of U.S. Patent No. 5,574,911 to D’Angelo et al. (hereafter D’Angelo). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a) which requires that three basic criteria must be met, as set forth in M.P.E.P. §2142:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

The initial burden is therefore on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Applicants respectfully traverse the Examiner's assertion that modification of the device of Erickson according to the teachings of D'Angelo would produce the claimed invention. Applicants submit that Erickson in combination with D'Angelo fail to teach a substantial number of the claimed elements of the present invention. Furthermore, Applicants also submit that neither Erickson nor D'Angelo contain teachings for combining the cited references to produce the Applicants' claimed invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C §103 are improper.

Regarding the Examiner's rejection of independent claims 1 and 21, the Applicants respond to the Examiner's §103 rejection as if applied to amended independent claims 1 and 21 which have been amended to recite a "*said requested process executing with optimal performance when authorized by said allocation*

manager, said optimal performance being due to guaranteed pre-allocated resources provided by said electronic device" which are limitations that are not taught or suggested either by the cited references, or by the Examiner's citations thereto. Applicants submit that the foregoing amendments are supported by claims 17 and 37, as originally filed, and therefore do not necessitate a new search.

Erickson essentially teaches reserving "communication resources" for the utilization of "non-queued" services. However, Applicants submit that the "resources" claimed and disclosed in Erickson are not analogous to those resources claimed and disclosed in the present Application. For example, Erickson discusses allocating "periodically repeating time slots, distinct carrier frequencies, orthogonal codes, etc." for use in wireless communication procedures (column 4, lines 48-50). In contrast, the resources referred to by Applicants refer to various system resource characteristics such as bus bandwidth, CPU processing capacity, or system memory capacity for optimally processing isochronous data (Specification, page 10, lines 7-11). Furthermore, Applicants submit that Erickson nowhere mentions or teaches "time-critical isochronous data" that is manipulated by a requested isochronous process, as claimed by Applicants.

In addition, Applicants submit that Erickson nowhere discloses or teaches Applicants' claimed "resource characterization" which is alternately referred to in the Applicants' Specification as a "cantaloupe" (page 8, lines 25-28). Furthermore, Erickson nowhere discloses comparing resource values from a "cantaloupe" with currently available system resources to determine whether to

“authorize or deny” a particular isochronous process, as claimed by Applicants. For at least the foregoing reasons, Applicants respectfully submit that all elements of their claimed invention are not identically disclosed or taught by Erickson.

With regard to claim 42, “means-plus-function” language is utilized to recite elements and functionality similar to those recited in the other independent claims which are discussed above. Applicants therefore incorporate those remarks by reference with regard to claim 42. In addition, the Courts have frequently held that “means-plus-function” language, such as that of claim 42, should be construed in light of the Specification. More specifically, means-plus-function claim elements should be *construed to cover the corresponding structure, material or acts described in the specification*, and equivalents thereof.

Applicants respectfully submit that, in light of the substantial differences between the teachings of the cited references and Applicants’ invention as disclosed in the Specification, claim 42 is therefore not anticipated or made obvious by the cited references. Applicants specifically direct the Examiner’s attention to Applicants’ discussion of FIGS. 5-7 (Specification, page 10, line 1 through page 14, line 2) which describes in detail the Applicants’ claimed “means for referencing” and “means for handling”.

The Examiner concedes that Erickson fails to teach that Applicants’ claimed “resource characterization include one or more resource listing and resource usage value that are required for an optimal performance”. Applicants concur. The Examiner then points to D’Angelo to purportedly remedy this defect.

D'Angelo essentially teaches attempting to allocate requested resources, and then reducing the amount of requested resources based upon certain specified "control values" if sufficient resources are not available to provide the initially requested allocation amounts (see column 8, lines 26-47).

In contrast, Applicants teach and claim a "resource characterization that includes one or more resource listings and one or more corresponding resource usage values that are required for an *optimal performance* of said requested process." Furthermore, Applicants teach and claim that "*said requested process executes with optimal performance due to guaranteed pre-allocated resources.*" For at least the foregoing reasons, Applicants submit that D'Angelo teaches away from Applicants' invention. A prior art reference which teaches away from the presently claimed invention is "strong evidence of nonobviousness." In re Hedges, 783 F.2d 1038, 228 U.S.P.Q. 2d 685 (Fed.Cir. 1987).

Further regarding the Examiner's rejection of dependent claims 2-16, 18-20, 22-36, and 38-40, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 2-16, 18-20, 22-36, and 38-40 so that these claims may issue in a timely manner.

In addition, as discussed in the prior Response to Office Action, the Applicants' originally-filed Application presented forty-two claims for examination, including four independent claims and thirty-eight dependent claims. In this present Office Action as well as the two previous Office Actions, although the Examiner does not specifically refer to any of Applicants' dependent claims by number, it appears that a substantive examination has been provided only for dependent claims 9 and 29. In other words, thirty-six of the originally-filed claims have received no substantive examination. Specifically, claims 2-8, 10-20, 22-28, and 30-40 have been given *no substantive examination* in either the initial Office Action or the present Office Action.

Applicants therefore respectfully submit that Applicants' originally-filed claims have not received an adequate examination. Applicants also submit that claims 2-8, 10-20, 22-28, and 30-40 contain a substantial number of patentable elements and functionalities, and therefore merit a more thorough and complete examination. Applicants therefore respectfully request the Examiner to issue a new non-final Office Action that specifically and substantively addresses each of Applicants' dependent claims 2-20 and 22-40 (referenced by claim number), or in the alternative, to reconsider and allow claims 1-16, 18-36, and 38-40 so that the present Application may issue in a timely manner.

For at least the foregoing reasons, the Applicants submit that claims 1-16, 18-36, and 38-40 are not unpatentable under 35 U.S.C. § 103 over Erickson in view of D'Angelo, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and

withdrawal of the rejections of claims 1-16, 18-36, and 38-40 under 35 U.S.C. § 103.

Claims 41 and 42

In the present Office Action, the Examiner has not included independent claims 41 and 42 in the foregoing rejections under 35 U.S.C. § 103. Neither has the Examiner indicated that these claims are allowable. Applicants therefore respectfully request the Examiner to clarify the status of claims 41 and 42, so that these claims may issue in a timely manner.

New Claims


The Applicants herein submit additional claims 43-55 for consideration by the Examiner in the present Application. The new claims 43-55 recite specific detailed embodiments for implementation and utilization of Applicants' resource characterization, as disclosed and discussed in the Specification. Applicant submits that newly-added claims 43-55 contain a number of limitations that are not taught or suggested in either of the cited references. Applicant therefore respectfully requests the Examiner to consider and allow new claims 43-55, so that these claims may issue in a timely manner.

Summary

Applicants submit that the foregoing amendments and remarks overcome the Examiner's rejections under 35 U.S.C. §103(a), and the judicially-created doctrine of obviousness-type double patenting. Because the cited references, or the Examiner's citations thereto, do not teach or suggest the claimed invention, and in light of the differences between the claimed invention and the cited prior art, Applicants therefore submit that the claimed invention is patentable over the cited art, and respectfully request the Examiner to allow claims 1-16, 18-36, and 38-55 so that the present Application may issue in a timely manner. If there are any questions concerning this amendment, the Examiner is invited to contact the Applicants' undersigned representative at the telephone number provided below.

Respectfully submitted,

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